IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.715 OF 2005

Shri Bapu Hari Magdum and Anr. .. Appellants

versus

Shri Shamrao Shripati Magdum
since deceased by and through
his LRs
1A. Smt.Tulsa Shamrao Magdum & Ors. Respondents

Mr.Vijay Patil for appellants

CORAM : P.V.KAKADE, J.

DATE : 25TH JULY 2005.

P.C.:

1. This is an appeal preferred against the judgment and order passed by Addl. District Judge, Islampur, Dist. Sangli dated 23.9.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge Junior Division, Shirala dated 8.8.1995 decreeing the suit of the plaintiffs for perpetual injunction against the defendants.

2. I have heard the learned counsel for both the

parties. Perused the record.

3. The plaintiffs filed the suit against the defendants for perpetual injunction simplicitor on the ground that the plaintiffs' lawful possession in the suit property was obstructed by the defendants. The suit was contested on behalf of the defendants denying the allegations of obstruction on various grounds.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved their lawful possession over the suit property referable to lawful title on the date of the suit. It was further held that the defendants have obstructed the possession of the plaintiffs in the suit property. The defendants' contention that the suit was barred by principles of res-judicata was also discarded on the basis of available evidence and suit came to be decreed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the lower court were legal and proper and therefore, appeal was dismissed. Hence the present appeal.

4. At the outset it may be noted that there is no substantial question of law involved in this appeal. The issues are entirely based upon the factual evidence, which are seen to be properly appreciated by both the courts below. It was submitted on behalf of the appellants that the revenue proceedings are pending and the possession of respondents has been accepted by the competent authority and it as not real finality. However, it must be noted that for the purpose of adjudication of this dispute in the Civil Court, it is necessary to see whether the plaintiffs were in lawful possession of the property referable to their ownership title and when the evidence on record is establishing, the pendency of revenue proceeding with regard to the suit property, cannot be taken into account, especially for the purpose of reliefs of perpetual injunction.

5. In view of this factual matrix there is no merit in the appeal and appeal stands dismissed. Consequently Civil Application No.1224 of 2005 also stands dismissed.